

APR 06 2004

McLaughlin 10/015,798 AU 2878 Examiner Otilia Gabor March, 2004

OFFICIAL

Informal FAX to Otilia Gabor at 571-273-2435

From John R. Ewbank

Re: Intent to pay \$385 under 17[e] to Request Continuing Examination under

Rule 114, but using Fee Transmittal Form 17 instead of Form 30, so that it

might be interpreted as it were a payment under 17[r] under Rule 129[a].

If I sought to correct such matter through Form 30 [accidentally discovered after Express Mail of the submission], how could it reach the individuals able to expedite matters sufficiently to prevent abandonment of the application?

14 PAGES

I tried to follow the Rules, and thought that because I was filing an amendment under Rule 114 that I was achieving a Request for Continued Examination that would provide me with greater flexibility than if I filed it as an amendment under Rule 116. I used the combination of Transmittal Form 21 and Fee Transmittal Form 50. After they had been mailed, I accidentally encountered Form 30, which refers to the fee under 17[e] for an RCE. My study of MPEP, etc. indicates that cases are abandoned sometimes because of technical imperfections in an RCE. If the delay in your receiving the amendment filed yesterday on March 27, 2004 were as long a delay in your receiving the amendment sent July 30, 2003, this case might encounter abandonment problems, notwithstanding my efforts to pay enough fees to avoid technical problems. Hence, I am seeking your guidance because I am aware that there cannot be any Extension of Time for correcting any technical imperfections concerning an RCE.

In order that you may recognize the problem, I am providing you with

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McLaughlin 10/015,798 AU 2878 Examiner Otilia Gabor March, 2004

informal "pre-view" inspection of some of the documents that are now at the Patent Office under the Express Mail processing for a Rule 114 Amendment after Final Rejection. At this time you do not need to review the many pages of US patents, and the "laser communication beam" journal article accompanied the 2004 IDS, in addition to about 32 typewritten pages and 3 sheets of drawings in the submission. You can review the situation by scanning: [a] one page Index of submission; [b] Transmittal Form; [c] Fee Transmittal Form; [d] 3 pages of claims; [e] Arguments concerning patentability of claims over Kroll et al in view of Chadwell; [f] draft of proposed Form 30; and [g] draft of proposed letter of transmittal concerning Form 30; [g] data relating to the address on the Express Mail. There were suspicions that the loss of the drawings submitted July 16, 2003 might possibly have resulted from some misinterpretation by that segment of the USPTO dealing with mailstops.

Any submission after Final is theoretically transmitted promptly to the Art Group. Some of these matters might be clarified because of your making a few phone calls within the Patent Office either while it is in the mail-receipt section, and/or soon after delivered to Art Group 2878.

Back around 1950, it seemed to me that the withdrawals from the Deposit Account were approximately the date when the Patent Office received any submission. In recent months, there seem to be weeks and months between filing and fund-transfer. My guess is that there is some way so that the \$385 payment can be properly designated as 17[e] instead of 17[r] and thus possibly prevent abandonment of the application. I may have a few days of higher blood pressure because of my fright about such a potentiality. I am quite grateful that I accidentally discovered Form 30, and apologize for not discovering it sooner.

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McLaughlin 10/025,798 AU 2878 Examiner Otelia Gabor, MARCH 2004

Index of Amendment under Rule 114 to Final Rejection of 02/12/04

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Approximate total of typewritten or formal drawing pages	35

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P1055021 (03 03)

Approved for use through 04/10/2003. OMB 051-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number

10/015,798

Filing Date

11/02/01

First Named Inventor

MELAN GIBLIN

Art Unit

2878

Examiner Name

OTILIA GABOR

Attorney Docket Number

01-04

ENCLOSURES (Check all that apply)

- | | | |
|--|---|---|
| <input type="checkbox"/> Fee Transmittal Form | <input checked="" type="checkbox"/> Drawing(s) FORMAL | <input type="checkbox"/> After Allowance Communication to a Technology Center (TC) |
| <input type="checkbox"/> Fee Affidavit | <input type="checkbox"/> Licensing related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input checked="" type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/Declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Change of Correspondence Address | <input checked="" type="checkbox"/> (Other Enclosure(s) (please identify below): |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Terminal Disclaimer | |
| <input checked="" type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> Request for Refund | |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> CD Number of CD(s) | |
| <input type="checkbox"/> Response to Missing Part/Incomplete Application | Remarks | |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | TERMINAL DISCLAIMER | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm
or
Individual
Signature
Date

JOHN R EWBANK

John R Ewbank

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as that class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date

Typed or printed

JOHN R EWBANK

Signature

John R Ewbank

Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 172 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

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JULY 17 (10.03)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003 Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$) 625

Complete if Known

Application Number

10/015,778

Filing Date

11/2/01

First Named Inventor

McLAUGHLIN

Examiner Name

OTILIA GABOR

Art Unit

2873

Attorney Docket No.

01-04

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
Account
Number
Deposit
Account
Name

50-1224

JOHN R. EWANK

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) on any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from	Fee Paid
Independent Claims	-20*-	X	
Multiple Dependent	-3*-	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1202 18	2202 9	Claims in excess of 20	
1201 86	2201 43	Independent claims in excess of 3	
1203 290	2203 145	Multiple dependent claims, if not paid	
1204 86	2204 43	** Reissue independent claims over original patent	
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

*or number previously paid, if greater; For Reissue, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge: late filing fee or oath	
1052 30	2052 15	Surcharge: late provisional filing fee or cover sheet	
1053 130	2053 65	Non-English specification	
1012 2,520	2012 1,260	For filing a request for ex parte reexamination	
1804 920	2004 460	Requesting publication of SR prior to business action	
1005 1,640	2005 820	Requesting publication of SR after business action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,400	2254 700	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 300	2401 150	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	2451 755	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive: unavoidable	
1453 130	2453 65	Petition to revive: unintentional	
1501 1,330	2501 665	Utility issue fee (or release)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	2460 65	Petitions to the Commissioner	
1807 50	2007 25	Processing fee under 37 CFR 1.17(a)	
1806 180	2006 90	Submission of information (Electronic Sign)	180
8021 40	2021 20	Resolving each patent assigned per property (lines number of properties)	
1809 770	2009 385	Filing a submission after final rejection (37 CFR 1.129(a))	385
1810 770	2010 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2001 385	Request for Continued Examination (RCE)	
1802 900	2002 450	Request for expedited examination of a design application	

(Other fee (specify))

TERMINAL DISCLAIMER

Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

625

SUBMITTED BY

Name (Print/Type)

JOHN R. EWANK

Signature

JOHN R. EWANK

Registration No.

(All numbers)

14853

(Complete if applicable)

Telephone 215-357-3977

Date

March 21, 2004

WARNING: Information on this form may become public. Credit card information should not

be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.22. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. There will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. (DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.)

McLaughlin 10/015,798 response to Final 02/12/04 AU 2878 Ex. O. Gabor

The invention claimed is:

1. [Previously presented] A monitoring device useful in seeking to retrieve a lost item, said lost item having a hologram attributable to surface components selectively responsive to a laser beam having an explicit wavelength selected from the atmospheric-penetrative identifying group consisting of 880-nm, 1310 nm and 1550 nm, said monitoring device comprising:

a source of electric power;

means actuated by said electrical power for generating a laser beam having a wavelength matching the wavelength for which said components are selectively responsive;

receptor cells responsive to the feedback light from said laser beam;

amplifier means amplifying the electrical signal generated by said feedback when the laser beam scans a search zone possibly containing such temporarily lost item; and

indicating means alerting a searcher to the varying intensity of such feedback when the laser beam scans a search zone possibly containing such temporarily lost item.

2. [original] The monitoring means of claim 1 in which the indicating means is an audio signal

3. -[original] The monitoring means of claim 1 in which the laser beam has a wavelength of 1310 nm.

-claims pag 1-

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4 [allowed] A method of seeking to retrieve an item that potentially might become temporarily lost which method comprises:

imparting to an outer surface of said item a hologram by depositing thereon components selectively responsive to a laser beam having an explicit wavelength selected from the atmospheric penetrating identifying group of wavelengths consisting of 88 nm, 1310 nm, and 1550 nm;
directing from a monitoring device controlled by the searcher and initially remote from said temporarily lost item a laser beam having the explicit wavelength corresponding to the wavelength for which said hologram is selectively responsive, said laser beam being directed into a search zone in which the temporarily lost item is believed to be, and said laser beam stimulating the reflection from such components of feedback light;

said monitoring device comprising receptor cells responsive to such feedback light, such receptor cells generating an electrical signal ;

said monitoring device comprising amplifying means for amplifying such electric signal;

said monitoring device comprising indicating means actuated by such amplifying means for alerting the searcher to the varying intensity of such indicating means when the laser beam scans a search zone possibly containing such temporarily lost item.

5. [allowed] The method of claim 4 for locating a temporarily lost item in which the hologram is responsive to a laser beam having a wavelength identified as the atmospheric penetrating wavelength of 1310 nm.

Claims pg. 2 -

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6. [allowed] The method of claim 4 in which the lost item is a launched experimental device.

7. [Allowed] The method of claim 4 in which the lost item is a golf ball.

8. [amended] An item having a hologramized badge selectively responsive to a laser beam having an atmospheric-penetrating identifying wavelength selected from the group consisting of 880 nm, 1310 nm, and 1550 nm, such badge being useful in the method in which || a laser beam matching such hologramized badge is directed || a searcher initially remote from the lost item directs from a monitor a laser beam having the explicit wavelength corresponding to the wavelength for which the hologram is selectively responsive into a searching zone and the feedback light is monitored in an effort to locate the temporarily lost item.

9. [withdrawn] A golf ball of claim 8]]

10. [new] An item in accordance with Claim 8 which is a golf ball.

-claims pg. 3=

Patentability over Chadwell in view of Kroll et al, etc.

Many independent inventors fail to retrieve their patenting costs, not because of any high fees by the USPTO, but partly because some patent lawyers/agents exploit independent inventors almost as ruthlessly as some of the patent marketing firms. The law firm handling the preparation and prosecution of the Chadwell application might have obtained a larger fee because his application included a conglomeration of "science fiction" alternatives that were quite confusing to readers of the patent. That portion of the Chadwell patent not directed to the Claims 1-5 embodiment taught very little beyond the scope of Chadwell Claims 1-5. A very slight glimmer of a possible suggestion, when buried in a an abundance of unworkable confusion does not constitute the kind of teaching that justifies a rejection of claims under either Sec. 102 or 103.

In the 21st century, litigation judges rarely need to evaluate the validity of claims resulting from a patent application prepared and prosecuted by the inventor as a pro se project. However even in the 21st century, litigation judges would probably show greater leniency toward such a "pro-se" patent than one prepared in a corporate patent department. When an application is prosecuted by a prestigious patent firm that possibly might be lengthening a patent application and adding additional sheets of drawings significantly for the purpose of increasing the potentiality of a larger fee, then clarity standards approach those expected from a corporate patent department. The effectiveness of the patent as a teaching is impacted by the confusion and ambiguity aspects of the total patent. When the teaching is so unambiguous as to justify a Sec. 102 rejection, then the conspicuous evidence that it was a hypothetical proposal can be irrelevant. However, the combination of extreme confusion, inconsistencies, and vagueness with such obviously hypothetical concepts of prior literature can

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McLaughlin 10/015,798 Art Unit 2878 Otelia Gabor, Ex. March, 2004

trivialize its usefulness as a reference under either Section 102 or Sec. 103. The concept of the reaction of the average artisan to a workshop having copies of the prior art on the walls of the workshop is a useful guide in evaluating Sec. 103 obviousness. Each of applicant's presently sought claims clearly passes such "references on the wall" test for confirming the unobviousness of such claims over Kroll et al in view of Chadwell and/or Chadwell in view of Kroll et al.

Counsel knows very little about golf. Counsel has a lifetime of playing fewer than 18 holes of golf, even though he was a caddy as a teenager. Counsel was an author of articles about buying a used car in the "Pinchpenny" magazine and book. Counsel's frugality prompted him to gullibly accept some prior art descriptions about aspiring to minimize the cost of lost golf balls. Caldwell and his attorney recognized that golfers had more concern about the "stroke penalties" than about the cost of a lost golf ball. If counsel had located the Chadwell patent in the prior art search, the present specification might have been prepared better than it was.

There is enough confusion in the Chadwell patent that one might suspect that a client who had a Claim 1-5 invention was induced to pay more for a confusing patent application featuring some Tom Swift type of science fiction vagueness that confused most readers without teaching significantly more than the invention of claims 1-5. The Chadwell specification supports such claims 1-5. If Chadwell had been preparing to market the hand-held device, there would have been no reason to describe or claim the cumbersome folding two antenna embodiment of claims 1-5.

Fig 6 of the Chadwell drawings is a schematic diagram of how the hypothetical system would work. Measuring and alerting the searcher to such

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distance was stressed by Chadwell, as clarified in Fig 6 in which rectangle 610 features the step entitled "Calculate the estimated distance" for display on the videoscreen.

Chadwell coats a golf ball with metalizing ink, such as an iron ink that can be detected by RADAR so that one of the two antennas can receive a stronger signal than the other, thus helping the searcher to know whether to move the shaft to the left or to the right. As explained at Col. 3, lines 53-54, the "science fiction" emitters 9 of the hand held device "are directed at unique angles" because Chadwell aspires to display on the videoscreen both the angle and the distance from the monitoring device

Fig 3 of Chadwell shows a radar system having two radio antenna designed to alert the searcher about whether the radar antenna should be moved to the left or right. Claims 1-5 are directed to this embodiment. Possibly this is what was developed by Chadwell that prompted the effort to seek a patent on using the radio waves as the "distance-measuring system" for locating the golf ball. During the preparation of the Caldwell application, there might have been some other concepts, all focusing on the distance-measurements, that led to 5 sheets of drawings and 5 columns of description.

Chadwell claims 1-5 are clearly directed to the radar antenna apparatus scheduled to be folded and carried in the golf bag. Chadwell's claim 8 is directed to the use of the soaked rag [shown in Fig. 2A] for coating the ball before each use. Such concepts are certainly remote from molding a grating into the dimples so that they will be selectively responsive to a laser beam of a particular fog-penetrating wave-length.

The general public and counsel have long had familiarity with the use of

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McLaughlin 10/015,798 Art Unit 2878 Otelia Gabor, Ex. March, 2004

RADAR to measure the time f r the receipt of an echo from a short wave radio beam. Counsel was long unaware, but has discovered recently that there have been certain military applications in which laser beams have been similarly used for measuring distances and/or the speed of a vehicle. Such systems are sometimes called LASAR. Counsel evaluates the combination of Kroll et al and Chadwell as they might be interpreted by a scientist adequately familiar with LASAR and testifying as an expert attacking the validity of any of the presently sought claims. Counsel has concluded that the two patent litigation judges who handled the two infringement suits in which he was involved in the '50s would uphold the validity of each of applicant's presently sought claims as unobvious over any plausible combination of Kroll et al and Chadwell. Hopefully the Examiner will prepare appropriate "reasons for allowance" which might explain that each of the allowed claims patentably distinguishes over the combination of Kroll et al and Chadwell, and/or other combinations of the teachings of any or all of the references.

--IDS 7--

PTO/S&SU (09-03)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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Request
for
Continued Examination (RCE)
TransmittalAddress to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	101015798
Filing Date	11/2/01
First Named Inventor	McLAUGHLIN
Art Unit	2878
Examiner Name	OTILIA GABOR
Attorney Docket Number	01-04

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

Express Mail on March 27, 2004

a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____

b. ☐ Enclosed

- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. **Miscellaneous**

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____

3. **Fees**

- The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed. The Director is hereby authorized to charge the following fees, or credit any overpayments, to:

a. ☒ Deposit Account No. 50-1224

- i. ☒ RCE fee required under 37 CFR 1.17(e) *This supplements Amendment Under R 114 on 3-27-04, comprising Form 17 that might have been misinterpreted as a 1717 payment*
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____

b. ☐ Check in the amount of \$ _____

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

even though this application does not qualify for Rule 129 (a) procedures

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	JOHN R. EWBANK	Registration No. (Attorney/Agent)	14853
Signature	<i>John R. Eubank</i>	Date	March 28, 2004

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	JOHN R. EWBANK	Date	March 28, 2004
Signature	<i>John R. Eubank</i>		

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Mailstop: Rule 114 Amendment After Final